



S.A.(MD).No.1081 of 2007

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD).No.1081 of 2007

M.Sankareswari

... Appellant/Appellant/Plaintiff

Vs

1.Muthumari

2.S.Kathiresan Poosari

3.S.Ganesan Poosari

4.Ramalakshmi

5.Kamalam

6.K.Selvam

7.P.Rajeswari

...Respondents/Respondents/Defendants

Prayer:- Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree in A.S.No.6 of 2006 on the file of the Sub-Court, Sivakasi dated 24.01.2007 confirming the judgment and decree in O.S.No. 33 of 2004 dated 30.09.2005 on the file of the District Munsif Court, Sattur.

For Appellant : Mr.A.Sivaji

For Respondents : M/s.Jessi Jeevapriya for R3
No-appearance for R2
R1, R4 and R7-Given up



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J U D G M E N T

The plaintiff in O.S.No.33 of 2004 which she had laid for partition of four items of the suit properties is the appellant herein.

2. In the suit, she had claimed 1/8 share in all the four items of the properties. The trial Court had granted 1/192 share in item Nos.1 and 2 and 1/24 share in item No.3 and dismissed the suit as regards item No.4. Item No.4 is a certain share in the emoluments of her deceased father. Aggrieved by the said decree, the plaintiff preferred A.S.No.6 of 2004. The decree of the trial Court was confirmed by the First Appellate Court. Hence, this second appeal.

3. The case of the plaintiff is that the three items of the suit properties are ancestral properties in the hands of the father of the plaintiff and the defendants 2 to 7. He died leaving behind him surviving his wife Muthumari, the first defendant herein and eight children. Of the children,



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two are his sons and they are arrayed as the defendants 2 and 3. The rest are his daughters of whom the plaintiff is one.

4. This appeal was admitted on 05.03.2008 for considering the following substantial question of law:-

“whether the judgment and decree of the courts below is perverse on account of its reliance on Ex.B.3 which has not attained finality on account the pendency of the appeal in A.S.No.19 of 2006?”

5. The learned counsel appearing for the appellant submitted that consequent to the Hindu Succession (Amendment) Act, 2005 (39 of 2005) and the authority in ***Vineeta Sharma vs. Rakesh Sharma and others*** [(2020) 9SCC 1] , the plaintiff must be treated at par with male co-parcener and that she would be entitled to 1/7 share in the suit properties. Now, the first defendant, mother of the appellant, had passed away without leaving any testamentary or non-testamentary instrument as regards her share. He also contended that the Courts below were wrong in declining the plaintiff's



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share in item No.4.

6. In response, the learned counsel appearing for the respondent submitted that the plaintiff has directed the appeal only against the dismissal of the suit as regards item No.4 and not with regard to any enlargement of right. She added that so far as the item No.4 is concerned, the plaintiff seeks emoluments paid for the services rendered as poojari and they are personal to the person who has rendered service and it is not partible. Hence, the Courts below are correct in their approach in this regard.

7. This Court finds that so far as the dismissal of the suit as concerning the item No.4, it is in order, and cannot be interfered with. Turning to the enlargement of right under the Hindu Succession (Amendment) Act, 2005 (39 of 2005), it is a legal consequence and is not depended on the pleading. Hence, this Court is under a duty to apply the same.

8. In fine, this Second Appeal is partly allowed and the plaintiff's 1/7 share in item Nos.1 to 3 is hereby declared and the appeal as regards the



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item No.4 is dismissed. The judgment of the First Appellate Court will stand modified to the extent indicated above. No costs.

12.10.2022

Internet: Yes

Index: Yes/No

ssb

To

1.Sub-Court, Sivakasi

2. District Munsif Court, Sattur.



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